

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 55 - SB 120**

February 12, 2017

**SUMMARY OF BILL:** Enacts the Organized Retail Crime Prevention Act, creating two new theft offenses for the purpose of prosecuting individuals that return stolen merchandise to receive money or store credit.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$88,300/Incarceration\***

**Increase Local Revenue – Exceeds \$20,000**

**Other Fiscal Impact – The proposed legislation could increase state and local sales tax revenue collections by deterring individuals from returning stolen merchandise to a retailer for store credit, which will include the estimated sales tax that would have been paid on the item. However, given the extent of unknown variables, any increase in sales tax revenue cannot be quantified with reasonable certainty.**

**Assumptions:**

- Title 39, chapter 14, part 1 includes various sections criminalizing conduct committed against property, including theft and theft of property involving merchandise.
- The proposed legislation enacts the Organized Retail Crime Prevention Act (“the Act”), which adds a new section to title 39, chapter 14, part 1. The Act creates two new offenses for:
  - Working with one or more persons to commit theft of any merchandise with a value exceeding \$1,000 aggregated over a 90-day period with the intent to sell the property for monetary or other gain, or to fraudulently return the merchandise to a retail merchant; or
  - Receiving, possessing, or purchasing any merchandise or stored value cards obtained from a fraudulent return with the knowledge that the property was obtained in violation of § 39-14-103 (theft) or § 39-14-146 (theft of property involving merchandise).
- The Act defines “stored value card” as any card, gift card, instrument, or device issued with or without fee for the use of the cardholder to obtain money, goods, services, or anything else of value. These include debit cards issued for use as a stored value card or

gift card, and an account identification number or symbol used to identify a stored value card.

- Tennessee Code Annotated § 39-14-105(b) allows for the aggregation of multiple thefts to determine the value and grade of the theft if the criminal acts arise from a common scheme, purpose, intent, or enterprise. The Act requires that the offense involves merchandise with an aggregated value of over \$1,000 and with the intent to profit.
- It is assumed that the new offenses created by the Act will not create any additional admissions that would not already be criminal under the current code.
- An offense under the Act shall be punished one classification higher than provided in Tenn. Code Ann. § 39-14-105 if the defendant organized, supervised, financed, or managed activity of one or more other persons in furtherance of the offense prescribed by this section.
- It is assumed that the Act will result in the enhancement of one class E felony to a class D felony admission each year, one class D felony to a class C felony admission each year, and one class C felony to a class B felony admission every two years.
- These offenses would be prosecuted under the criminal responsibility statute, Tenn. Code Ann. § 39-11-402, at the same level as theft, but will be prosecuted one classification higher under the proposed legislation.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this proposed legislation.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2017 is \$68.75.
- The average time served for a class D felony is 2.23 years. The average time served for class E felony is 1.40. The Act will result in each offender serving an additional 0.83 year.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 0.83 years (303.16 days) at a cost of \$20,842 (\$68.75 x 303.16 days).
- The average time served for a class C felony is 3.51 years. The average time served for a class D felony is 2.23 years. The Act will result in each offender serving an additional 1.28 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.28 years (467.52 days) at a cost of \$32,142 (\$68.75 x 467.52 days).
- The average time served for a class B felony is 6.32 years. The average time served for a class C felony is 3.51 years. The Act will result in each offender serving an additional 2.81 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every two years serving 2.81 years (1,026.35 days) for an annualized cost of \$35,281 [(\$68.75 x 1,026.35 days) / 2].
- The Act will increase recurring state incarceration costs by a total of \$88,265 (\$20,842 + \$32,142 + \$35,281).
- The Act will not create any new felony cases for the courts, district attorneys, or public defenders, but rather impact the sentencing of current cases. It is assumed that the

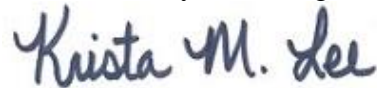
courts, district attorneys, and public defenders can accommodate the impact to their caseloads within their existing resources.

- The proposed legislation could deter some individuals from returning stolen merchandise to a retailer for store credit. When a person returns stolen merchandise, the retailer gives store credit in an amount not just equal to the price of the item, but the price plus any sales tax that would have been paid on the item. In these cases, the retailer will withhold this sales tax from its remittance to the state on the assumption that the sales tax was paid when the item was presumably purchased.
- To the extent the proposed legislation deters individuals from returning stolen merchandise to a retailer for store credit, the proposed legislation will increase sales tax collections. However, given the extent of unknown variables, any increase in sales tax revenue cannot be quantified with reasonable certainty.
- The proposed legislation authorizes the forfeiture of any interest in property acquired. Information from local law enforcement agencies indicate that thousands of dollars of store value cards are seized every year.
- It is standard procedure to make an attempt to return the cards to the retailer. However, many retailers will donate or forfeit the card over to law enforcement.
- The proposed legislation would authorize law enforcement agencies to institute forfeiture actions and collect the value of the cards as revenue.
- It is assumed that the proposed legislation will increase recurring local revenue by an amount estimated to exceed \$20,000 per year.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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